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Paper No. 9

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OFFICE OF PETITIONS

In re Application of
Ming Chieh Hsu
Application No. 09/759,783
Filed: January 16, 2001
Title: STRUCTURE OF A SCREWDRIVER
TIP

DECISION ON PETITION

This is a decision on the paper transmitted via facsimile on June 2, 2003, and the papers filed June 27, 2003, consisting of a substitute specification, abstract, and request for extension of two months (credit card payment in the amount of \$205). Both sets of papers are being treated as a petition under 37 CFR 1.181 (no fee required).

The petition under 37 CFR 1.181 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted.

The above-identified application became abandoned for failure to timely reply to the Notice to File Corrected Application Papers, mailed on February 27, 2001. This notice set a shortened statutory period for reply of two months. Extensions of time under 37 CFR 1.136(a) were available. No reply to the Notice having been received, the above-identified application became abandoned on April 28, 2001. A Notice of Abandonment was mailed on August 23, 2002.

On September 10, 2002, applicant filed a paper titled "A Statement that the Entire Delay was Unintentional", together with a petition fee of \$50. Applicant stated that the Notice to File Corrected Application Papers was never received. In light of applicant's statement of non receipt, applicant's September 10, 2002 paper was treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181 (for which no fee is required), rather than a petition to

revive an unintentionally abandoned application under 37 CFR 1.137(b) (for which a fee of \$640 was required on September 22, 2002).

On May 22, 2003, a decision was mailed dismissing applicant's petition. The dismissal set a shortened period for reply of two months. Applicant did not submit the required proof to establish non-receipt of the Notice to File Corrected Application Papers. To establish non-receipt of an Office action, applicant is required to: (1) state that the Office action was not received; (2) attest to the fact that a search of the file jacket and docket records indicates that it was not received; and (3) include a copy of his docket records where the non-received Office action would have been entered had it been received and docketed. Applicant did not meet requirements (2) and (3). Accordingly, the holding of abandonment could not be withdrawn and applicant's "petition" had to be dismissed. As there was no fee necessary for a petition to withdraw the holding of abandonment, applicant's petition fee of \$50 was refunded.

In the May 22, 2003 decision, applicant was advised that if he could not establish the non-receipt requirements necessary to withdraw the holding of abandonment, he could still file a petition to revive the application under either 37 CFR 1.137(a) (unavoidable delay) or 37 CFR 1.137(b) (unintentional delay). In addition, applicant was advised of the requirements for a grantable petition under 37 CFR 1.137(a) and 37 CFR 1.137(b). Once again, those requirements are as follows.

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the reply required to the outstanding Office action or notice, unless previously filed; (2) the petition fee set forth in 37 CFR 1.17(l) – currently \$55 for a small entity; and (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unavoidable.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the reply required to the outstanding Office action or notice, unless previously filed; (2) the petition fee set forth in 37 CFR 1.17(l) – currently \$665 for a small entity; and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional.

In his June 2, 2003 facsimile, applicant has stated that he filed a petition to revive an abandoned application due to unintentional delay on September 10, 2002, paid \$50 for the fee, and yet doesn't understand why the petition was dismissed. The petition was dismissed because a petition to revive an abandoned application due to unintentional delay requires a petition fee of \$665 (\$640 at the time applicant filed his petition on September 10, 2002).

Receipt of the substitute specification and abstract, filed June 27, 2003, is acknowledged. However, as there was no need for a two month extension of time (the May 22, 2003 decision set a period for reply of two months), the \$205 fee submitted will be refunded to applicant under separate cover.

As applicant has not filed a grantable petition to withdraw the holding of abandonment under 37 CFR 1.181, or a grantable petition under 37 CFR 1.137(a) (unavoidable delay) or 37 CFR 1.137(b) (unintentional delay), the application remains abandoned. Copies of the forms for the unavoidable and unintentional delay petitions are enclosed for applicant's convenience.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A copy of the form required to change an address is enclosed for applicant's convenience. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision may be directed to the undersigned at 703-305-0272.



Cliff Congo
Petitions Attorney
Office of Petitions

Enc: PTO/SB/61 (3 pages)
PTO/SB/64 (2 pages)
PTO/SB/122 (1 page)

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